

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22879
Docket Number MW-23011

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(St. Louis Southwestern Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Maintenance of Way Agreement, especially but not limited to Rule 6 - Discipline and Grievances, when on **May** 12, 1977, **Mr. James Cole, Sammie Lee Garner and Mr. Roosevelt Colvin** were dismissed from service and denied a hearing (System File **MW-78-13-CB**).

(2) Laborers Cole, Garner and Colvin Fe now reinstated with pay for all time lost and with seniority, vacation and other rights unimpaired. This charge shall also be stricken from their records."

OPINION OF BOARD: There are three **claimants** in this case. Two were discharged by Carrier on May 10, 1977, and one on May 12, 1977. All discharges arose from the same incident. Claimants were extra gang laborers assigned to Carrier's track Gang 11. They were billeted in company trailers in Jonesboro, Arkansas. On or about May 10, 1977, claimants were arrested and confined to Craighead County Jail on a rape charge. It was alleged by two women that claimants raped them in one of the company trailers. When **claimants** were confined in jail, Carrier dismissed them from service for violation of Rule **M801** of "Rules and Regulations for Maintenance of Way and Structures" and General Rule "N" of the Uniform Code of operating Rules. (Both rules refer to conduct of **employees** and their obligation to act in a proper and courteous **manner** at all times.)

The Organization argues that **claimants** were dismissed from service without the advantage of a hearing, which is required by Rule 6 of the controlling agreement. It especially argues this point in light of the fact that all charges against **claimants** were eventually dropped in civil court.

This Board is of the opinion, however, that Carrier did not violate this rule. Under the circumstances, Carrier had ample reason to believe that claimants were involved with the two female victims. Claimants were charged with a Class A felony by civil authorities. Carrier discharged claimants based on its knowledge of the event when their arrest took place. Claimants did not request a hearing into their discharge until after the charges were dropped by the civil authorities. Article 6-1 requires that an **employee** who feels unjustly treated to request a hearing **within ten** days from the date the discipline was administered. Claimants failed, by a considerable period of time, to meet this deadline.

The Organization argues that since claimants were cleared of all charges, they were innocent and falsely accused. This argument cannot prevail. Claimants were charged with a Class A felony. The charges were subsequently dropped by the district attorney. There could be many reasons why the authorities decided not to continue the prosecution. The failure to prosecute, however, is not necessarily an indication that claimants would not have been found guilty, if tried. It is well accepted in all arbitral forums that arbitrators, hearing officers, and referees (in the case of the Railway Adjustment Board) are not bound by decisions rendered by civil courts when discipline has been imposed under the collective bargaining agreement. Results in one forum need not be **dispositive** in the other forum, regardless of the outcome.

It is the opinion of the Board that carrier had justification for its actions and that it did not act in an **arbitrary**, capricious, or discriminatory manner. It did not violate the collective bargaining agreement by not granting claimants a hearing under **Rule** 6.1 of the agreement.

FINDINGS: The Third Division of the **Adjustment** Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment **Board** has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.